

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	John F. Grady	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	01 CR 348 - -3	DATE	2/6/2003
CASE TITLE	USA vs. Betty Loren-Maltese		

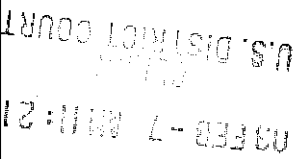
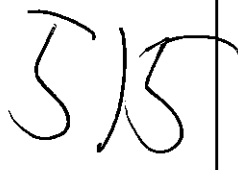
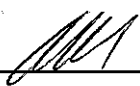
[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] ENTER MEMORANDUM OPINION concerning the government's motion to forfeit substitute assets of the defendant Loren-Maltese.
- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.		number of notices FEB 10 2003	Document Number 
<input type="checkbox"/>	No notices required.		date docketed	
<input checked="" type="checkbox"/>	Notices faxed by judge's staff.		docketing deputy initials	
<input type="checkbox"/>	Notified counsel by telephone.		date mailed notice	
<input type="checkbox"/>	Docketing to mail notices.		mailing deputy initials	
<input type="checkbox"/>	Mail AO 450 form.			
<input type="checkbox"/>	Copy to judge/magistrate judge.			
AMM 		courtroom deputy's initials Date/time received in central Clerk's Office		

01-348

February 6, 2003

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES)	
)	
Plaintiff,)	No. 01 CR 348-3
)	
v.)	Hon. John F. Grady
)	
BETTY LOREN-MALTESE)	
)	
Defendant.)	

DOCKETED

FEB 10 2003

MEMORANDUM OPINION CONCERNING
THE GOVERNMENT'S MOTION TO FORFEIT SUBSTITUTE
ASSETS OF THE DEFENDANT LOREN-MALTESE

The government has filed two motions seeking the forfeiture of specific items of real and personal property as "substitute assets" of the defendant Betty Loren-Maltese, pursuant to 18 U.S.C. § 1963(m). The jury found that the defendant had acquired the sum of \$3,250,000.00 in cash as a result of her racketeering activity and forfeited the defendant's interest in that amount of cash. The government has been unable to locate anything like that amount of cash in the possession of or under the control of Loren-Maltese, despite what the court finds to have been diligent efforts, as described in the affidavit of agent William A. Paulin, attached to the government's response filed February 5, 2003. The defendant Loren-Maltese has made no disclosure of her assets, and specifically refused to do so in connection with the pre-sentence investigation in this case. As matters now stand, the court is

5/5

satisfied that, unless the government is entitled to forfeiture of the "substitute assets" listed in its two motions, there is no likelihood of any successful collection of any portion of the \$3,250,000.00 cash forfeiture.

We turn, then, to the statute the government relies on to authorize forfeiture of the substitute assets. Section 1963(m) provides that if, "as a result of any act or omission of the defendant," any of the property forfeited in the case

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third party;
- (3) has been placed beyond the jurisdiction of the court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5)."

There are two aspects of the statute that the parties focus on. First, whether it can be said that any difficulty the government is having in locating the forfeited cash is "a result of any act or omission of the defendant." In her memorandum opposing the government's motions, the defendant argues that the government has not shown that its failure to discover the cash is "a result of any act or omission of the defendant." The government responds that the defendant has kept the \$3,250,000.00 "out of financial

accounts, thereby shielding it from governmental scrutiny." Response at 2. The defendant seems to think that there must be proof of some affirmative act of concealment, as opposed to a mere omission to disclose. We do not read the statute to require proof of affirmative acts of concealment. It says "omission," and we believe that can reasonably be read to mean an omission to make known to the government the location of any cash defendant derived from her racketeering.

The other inquiry under the statute is whether any of the five conditions for substitute forfeiture have occurred as a result of the defendant's omission. Surely item (1) has occurred: the cash cannot be located upon the exercise of due diligence. Moreover, each of the other five conditions for forfeiture may have occurred as a result of one or more "acts" of the defendant: we know that the defendant has transferred money to third parties - to casinos, to attorneys and to her mother, having discussed these expenditures with the parties as recently as last week. It appears likely also that the \$3,250,000.00 has been "substantially diminished in value"(item 4) as a result of defendant's expenditures.

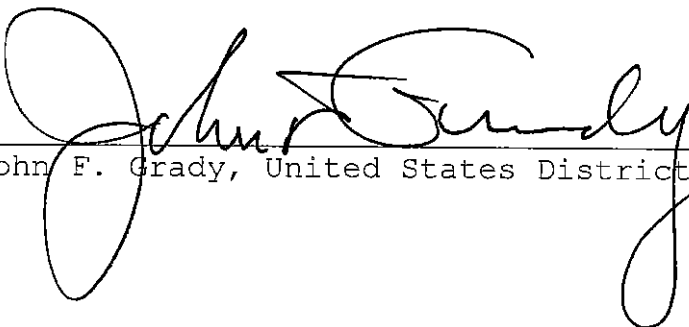
The court believes that the government has made out a case for the substitute forfeitures requested. The government correctly points out that there is no apparent danger of seizing amounts in excess of the total amount owed, inasmuch as the total value of the substitute assets is far less than the \$3,250,000.00. And, of course, the defendant will be given an appropriate credit for

amounts recovered from any jointly and severally liable co-defendants. Finally, the interest of third parties will be protected by the procedures available to any of them who desire to assert claims to any of the substitute assets.

The court will enter this date the proposed orders submitted by the government.

Date: February 6, 2003

ENTER:



John F. Grady, United States District Judge